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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID MORENO,

Defendant and Appellant.

A126099

(Lake County
Super. Ct. No. CR917979)

I. INTRODUCTION

By an information filed April 30, 2009,¹ appellant was charged with seven felony counts, including robbery, residential burglary, elder abuse, vandalism, resisting arrest, etc., all based on events occurring at a residence in Clearlake on February 17. On the day scheduled for his jury trial, June 23, appellant and the prosecution entered into a plea bargain by which he pled guilty to one count of elder abuse and another of making a terrorist threat (Pen. Code, §§ 368, subd. (b)(1) and 422)² and was subsequently sentenced to an aggregate term of six years. Now, pursuant to *People v. Wende* (1979) 25 Cal.3d 436, he appeals and asks this court to examine the record and determine if there are any issues deserving of further briefing. We have done so, find none, and hence affirm the judgment and the sentence imposed.

¹ All subsequent dates noted are in 2009.

² All subsequent statutory references are to the Penal Code.

II. FACTUAL AND PROCEDURAL BACKGROUND

One of the victims in this case, Orville Greenwell, age 71 at the time, lived in his home on 35th Avenue in Clearlake along with his lady-friend, Doris Ramirez, and his caretaker, Tania Inman, on the date of the events at issue in this case, February 17.

At around 9:30 p.m. on that evening, appellant came into Greenwell's backyard and started knocking loudly and "hammering on the door for entrance, turning the doorknob trying to get in." Greenwell knew appellant, as he was a relative of friends of Ramirez, and he had been to Greenwell's house, albeit briefly, previously. Because of the way appellant was demanding to enter, Greenwell did not open the door. Appellant then went into the front yard of the house and "broke through the living room window," and got into the house that way.

After he was in Greenwell's home, appellant cursed Greenwell and started hitting him and chasing him around a couch. Greenwell attempted to stop him by pushing appellant with one of his arms and hands, but appellant responded by biting Greenwell's right hand near the small finger joint. He also tried, unsuccessfully, to remove a television set from the premises, claiming it belonged to his sister.

During this encounter, all three of the residents were telling appellant to leave, and Ramirez had called the Clearlake police to report what was happening. Just before the police arrived, appellant left the premises, grabbing Ramirez's purse and then breaking an outdoor gate in the process.

Two officers responded to the scene separately, just a few minutes later. Sergeant Miller went into the home and took statements from Greenwell and Ramirez. Greenwell recalled that appellant had cursed him, stating, among other things, that he was "dead," "done," and "through." Ramirez told Miller that she had heard appellant threaten to kill Greenwell, and specifically saw him bite Greenwell's hand. Inman confirmed most of these same aspects of the event to Miller.

The second officer responding was Sergeant Celli, who Miller summoned for assistance via radio. Celli chased appellant first in his police car and then on foot,

ordering him to stop as he did so; appellant did not stop but, after a short time, Celli caught up with him and tasered him.

As noted above, on April 30, an information was filed charging appellant with these seven crimes: (1) robbery of Ramirez (§ 211); (2) residential burglary of Greenwell's home (§ 459); (3) elder abuse of Greenwell (§ 368, subd. (b)(1)); (4) making a terrorist threat to Greenwell (§ 422); (5) attempted petty theft of Ramirez's property (§ 484, subd.(a)); (6) vandalism of the property of all three occupants of the house (§ 594, subd. (a); and (7) resisting arrest (§ 148, subd. (a)(1)). The information also alleged that appellant had suffered four convictions resulting in prison terms within the meaning of section 667.5, subdivision (b), and six prior felonies in all under section 1203, subdivision (e)(4).

Appellant originally pled not guilty to all charges on May 4. However, and as noted above, just before his jury trial was to start on June 23, he pled guilty to the third and fourth counts alleged in the information. On August 21, the court sentenced appellant only on the elder-abuse count, staying the sentence on the terrorist threat count under section 654. The sentence imposed was four years on count three and two additional years for the prior prison terms, for an aggregate sentence of six years.

Appellant filed a timely notice of appeal on September 10, but no certificate of probable cause was requested or obtained. (See § 1237.5 and Cal. Rules of Court, rule 8.304(b).

III. DISCUSSION

Because appellant pled guilty to two counts in the information before his sentence, and neither sought nor obtained a certificate of probable cause, the only conceivable issue in this *Wende* appeal is the sentence imposed by the trial court. As the reporter's transcript of the August 21 sentencing hearing reveals, the court concluded—despite the disagreement of the district attorney—that the crimes to which appellant had pled guilty were essentially concurrent and that, therefore, section 654 precluded a separate consecutive sentence on the terrorist threat count. Appellant's extensive criminal record, noted both by the court and the probation office, the fact that he was on both probation

and parole at the time of the February 17 offenses, and the circumstances surrounding those offenses combine to convince us that that sentence was in no manner unreasonable.

Under the circumstances, we find no issues deserving of further briefing.

IV. DISPOSITION

The judgment is affirmed.

Haerle, Acting P.J.

We concur:

Lambden, J.

Richman, J.